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SPAIN

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GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

I. DECLARATION OF HUMAN RIGHTS

A. Legal framework

1. Title I of the Spanish Constitution concerns "Fundamental rights and duties". Chapter II of this Title has the heading "Rights and Freedoms" and is divided into two sections, the first of which is headed "Fundamental Rights and Public Freedoms", and the second, "The Rights and Duties of Citizens" (see annexed document No. 1*).

B. Suspension of certain rights

2. Article 55 of the Constitution states:

> "1. The rights recognized in articles 17, 18 (2) and (3), 19, 20 (1) (a) and (d) and (5), 21, 28 (2) and 37 (2) may be suspended when the declaration of a state of emergency or siege is decided upon under the terms provided in the Constitution. Article 17 (3) is excepted from the foregoing provisions in the event of the declaration of a state of emergency.
>
> 2. An organic law may determine the manner and the cases in which, on an individual basis and with the necessary judicial participation and appropriate parliamentary control, the rights recognized in articles 17 (2) and 18 (2) and (3) may be suspended for specific persons in connection with investigations relating to the activities of armed bands or terrorist groups.

Unjustified or improper use of the powers recognized in the said organic law shall give rise to criminal responsibility as constituting a violation of the rights and freedoms recognized by the law."

C. Direct application of international treaties

3. Article 96 (1) of the Spanish Constitution states:

"Validly concluded international treaties, once officially published in Spain, shall form part of the internal legal order. Their provisions may only be repealed, amended or suspended in the manner provided in the treaties themselves or in accordance with the general rules of international law."

D. Interpretation of human rights standards

4. Article 10 (2) of the Spanish Constitution states:

"The standards relative to the fundamental rights and freedoms recognized by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements on the subject ratified by Spain."

E. Legislative development

5. Reference can be made to the following Organic Laws, among others:

7/85 of 1 July 1985 concerning the rights and freedoms of foreigners in Spain;

7/80 of 5 July 1980 regarding freedom of religion;

6/84 of 24 May 1984 on the habeas corpus procedure;

1/82 of 5 May 1982 concerning civil protection of the right to honour, personal and family privacy and personal reputation;

9/83 of 15 July 1983 regarding the right of assembly;

11/85 of 2 August 1985 on freedom of association (see annexed documents Nos. 2 to 7*).

II. PROTECTION OF HUMAN RIGHTS

A. Constitutional organ

6. People's Advocate (Ombudsman) (Organic Law 3/81 of 6 April 1981) (see annexed document No. 8*).

B. Competent Ministry

7. Ministry of Justice. Article 1 of Royal Decree 10/1991 of 11 January 1991 states:

> "1. Organ of the Central State Administration responsible for drawing up, directing and implementing government policy concerning the harmonization of draft bills prepared by different ministries for the development of the Constitution in matters concerning guarantees of fundamental rights".

C. Guarantee procedures

8. In the administration of justice, fundamental rights are afforded special protection facilitating accessibility and the speedy handling and conduct of proceedings involving human rights.

9. Law 62/78 of 26 December 1978 on jurisdictional protection of the fundamental rights of the person (see annexed document No. 9*).

D. Remedy of amparo before the Constitutional Court

10. Anyone who considers that any of his rights and freedoms as recognized in articles 14 to 29 of the Constitution have been infringed may apply for the protection of the Constitutional Court by means of the remedy of amparo.

11. Articles 41 to 58 of Organic Law 2/79 of the Constitutional Court, dated 3 October 1979 (see annexed document No. 10*).

E. Prison system

12. Special mention should be made of the Judges of Prison Supervision created by Organic Law 1/79 of 26 September 1979 (General Prison Law), whose basic functions are: "To ensure that the sentence imposed is served, to decide appeals relating to changes it may undergo as a consequence of the provisions of laws and regulations, to protect the rights of detainees and to correct possible abuses and irregularities in the application of the rules of the prison system" (art. 77).

F. Compensation for victims

1. Of a general character

13. On grounds of civil liability deriving from criminal offences - articles 19 et. seq., Criminal Code.

2. Of a special character

14. Royal Decree 1311/88 of 28 October 1988 on compensation for bodily harm suffered by victims of armed bands and terrorist groups (see annexed document No. 11*).

3. In preparation

15. Draft bill on compensation for victims of wilful wrongs.

III. SUMMARY

16. The Constitution proclaims and guarantees human rights.

17. Spain has ratified the international treaties and conventions relating to human rights, which are applied directly in the country.

18. Fundamental rights are protected through special treatment in the various courts and through the availability of the remedy of amparo before the Constitutional Court.

19. Spain has recognized the competence of the Human Rights Committee of the United Nations and the European Commission of Human Rights and the European Court of Human Rights of the Council of Europe.

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* The annexed documents were submitted in Spanish and are available for consultation in the United Nations Centre for Human Rights.